

REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

With the addition of new claims 29 and 30, claims 14, 15 and 17-30 are now pending in this application (Response of 5 December had erroneously referred to claims 14, 15, and 17-26 instead of 14, 15 and 17-28).

Claims 14 and 17 have been amended to insert the phrase --- which are foliar-acting and substantially taken up by the green parts of the plants only--- after the term "post-emergent herbicide". While this is believed to be redundant, the insertion of the phrase is being offered to repeat the point that a post-emergent herbicide is being used in a manner contrary towards its normal use, i.e. pre-emergently. Support for this amendment can be found in the specification, e.g. on page 1, lines 18-19 and page 2, lines 19-25. No new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE 35 U.S.C. §102 REJECTIONS HAVE BEEN OVERCOME

Claims 14, 15, 17 and 18 were rejected as allegedly being anticipated by Narayanan et al. (U.S. Patent 5,231,070 - "Narayanan").

Claims 14, 15, 17 and 18 were rejected as allegedly being anticipated by Sanders (U.S. Patent 5,635,447).

The applicants' response of 5 December 2006 is to be considered repeated here, however the applicants would like to add some additional points regarding the specificity of the teaching with regard to Narayanan and Sanders, i.e. these references represent only generic representations which do not describe the applicants' claimed compositions or method of use.

Compositions

Narayanan et al. does not specifically teach or disclose pre-emergence herbicidal compositions comprising post-emergence herbicides, i.e. that means Narayanan et al. does not specifically teach or disclose compositions comprising "post-emergence herbicides" within the meaning defined in the description of the present invention.

It was also alleged that Sanders discloses the combination of atrazine and polyacrylic acid. In the examples only polyaspartic acid is mentioned specifically. Additionally, atrazine is not the real candidate for "post-emergence herbicide" according to the invention.

A "post-emergence herbicide" according to the invention is an herbicide with almost exclusively leaf-acting effect such as glufosinate, bilanafos, glyphosate, diquat and paraquat and their salts. These are known to act on the green leaves of the plants and have weak soil-acting properties. Atrazine is not an example for herbicides covered by said term.

Neither Narayanan et al. nor Sanders teach the claimed compositions specifically or recognize that post-emergent herbicides can be used pre-emergently.

Method of Use

Narayanan and Sanders do not teach effects of "post-emergence herbicides" when used for the control of weeds pre-emergently.

The real surprising effect is the fact that the "post-emergence herbicides which are foliar-acting and substantially taken up by the green parts of the plants only" show a surprisingly enhanced herbicidal action to weeds when applied before emergence of the weeds. The remarkable effect is described in the specification and also shown by the declaration of Dr. Bickers (erroneously referred to as Dr. Bicher in the response of 5 December 2006)

A person skilled in the art would not have expected from Narayanan et al. and Sanders that the almost exclusively foliar-acting herbicides (i.e. post-emergent herbicides) can be formulated and used in a manner that they would provide valuable pre-emergent effects.

Therefore, for any of the above reasons, the applicants' claims are not anticipated by Narayanan or Sanders.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
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